

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Brian John Holsapple,

Civil No. 12-1117 (DWF/FLN)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Thomas Roy and State
of Minnesota,

Respondents.

This matter is before the Court upon Petitioner Brian John Holsapple's ("Petitioner") objections (Doc. No. 8) to Magistrate Judge Franklin L. Noel's May 23, 2012 Report and Recommendation (Doc. No. 7) insofar as it recommends that:

(1) Petitioner's application for a writ of habeas corpus be denied; (2) Petitioner's application for leave to proceed *in forma pauperis* be denied; (3) Petitioner's motion for appointment of counsel be denied; (4) this action be dismissed with prejudice; and (5) Petitioner not be granted a Certificate of Appealability.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections. In the Report and Recommendation, the Magistrate Judge concluded that none of Petitioner's current habeas corpus claims could be addressed on the merits because all of his claims were procedurally defaulted in the state courts.

(Doc. No. 7 at 4.) The Magistrate Judge further concluded that Petitioner failed to demonstrate cause, under the cause and prejudice requirement, and that he did not qualify for the “actual innocence” exception. (*Id.* at 8-9.) Petitioner contends, among other things, that his claims are not procedurally barred, that he should be able to proceed *in forma pauperis*, and that he should be appointed counsel in this action. (Doc. No. 8.)

Having carefully reviewed the record, the Court concludes that Petitioner’s objections offer no basis for departure from the Report and Recommendation. Petitioner’s Petition for a Writ of Habeas Corpus is thus rightfully dismissed, and his IFP application is properly denied.

Based upon the *de novo* review of the record, and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Brian John Holsapple’s objections (Doc. No. [8]) to Magistrate Judge Franklin L. Noel’s May 23, 2012 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Franklin L. Noel’s May 23, 2012 Report and Recommendation (Doc. No. [7]) is **ADOPTED**.

3. Petitioner’s petition for a writ of habeas corpus (Doc. No. [1]) is **DENIED**.

4. Petitioner’s application for leave to proceed *in forma pauperis* (Doc. No. [2]) is **DENIED**.

5. Petitioner's motion for appointment of counsel (Doc. No. [3]) is **DENIED**.
6. This action is **DISMISSED WITH PREJUDICE**.
7. Petitioner is not granted a Certificate of Appealability.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 5, 2012

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge